

1 remember that?

2 A Yes.

3 MR. CARROLL: All right. I have
4 this document. For identification, Your Honor,
5 this would be Comcast Exhibit 307, which is
6 Bates numbers NFL-E0945667 through 72. The
7 first page is headed "NFL Network Update
8 Annual Meeting March 26, 2007, Phoenix,
9 Arizona." Can I distribute this, Your Honor?

10 JUDGE SIPPEL: Yes. What was the
11 number you're assigning that?

12 MR. CARROLL: Comcast 307, Your
13 Honor.

14 JUDGE SIPPEL: Number 307. And,
15 as you have indicated, it's so identified for
16 the record as Comcast 307 for identification.

17 (WHEREUPON, THE DOCUMENT REFERRED
18 TO WAS MARKED AS COMCAST EXHIBIT
19 307 FOR IDENTIFICATION.)

20 JUDGE SIPPEL: Go ahead.

21 MR. CARROLL: Thank you.

22 JUDGE SIPPEL: Thank you.

1 THE WITNESS: Thank you.

2 BY MR. CARROLL:

3 Q And, do you recognize this as
4 another one of those slide decks that was put
5 together to give the Owners an update on the
6 NFL Network in connection with your annual
7 meeting in March of 2007?

8 A Yes, it appears to be, sir.

9 MR. CARROLL: Okay. Move this
10 into evidence, Your Honor.

11 MR. LEVY: No objection, Your
12 Honor.

13 JUDGE SIPPEL: Okay. Then Comcast
14 Exhibit 307, as identified, is now received in
15 evidence as 307.

16 (WHEREUPON, THE DOCUMENT REFERRED
17 TO, PREVIOUSLY MARKED COMCAST
18 EXHIBIT NO. 307 FOR
19 IDENTIFICATION, WAS RECEIVED IN
20 EVIDENCE.)

21 BY MR. CARROLL:

22 Q So, this is now March of 2007. If

1 you flip over to page 4 first of the exhibit,
2 ends in Bates number 670.

3 A Yes, sir.

4 Q The slide has the page number 4,
5 here we have a "Subscriber Outlook" page.
6 Correct?

7 A Yes, sir.

8 Q And here, again, this is now, I
9 guess, being done in March of '07, so it's
10 looking back to '06, based on what's happened
11 in '06. Is that right?

12 A Yes.

13 Q And then projecting forward for
14 '07. Yes?

15 A Yes.

16 Q Okay. So, when we look at what
17 happened in '06, Comcast subscribers listed
18 were just under [REDACTED] subscribers.

19 Correct?

20 A Yes.

21 Q And that was real close to your
22 original plan for them. That was what, [REDACTED]

1 what is that, [REDACTED]?

2 A Yes.

3 Q [REDACTED] It

4 was [REDACTED] versus your original plan of [REDACTED]

5 Correct?

6 A Yes.

7 Q But that's not because of any
8 tiering that's happened, because there hadn't
9 been any tiering yet. Correct?

10 A That's correct.

11 Q Okay. So, you had no -- at the
12 time, there was no accusations you were making
13 that Comcast had done anything wrong to get to
14 that distribution level. Correct?

15 A In other words, that Comcast had
16 done something to manipulate the shortfall?

17 Q No. Comcast had complied with
18 their contract obligations in meeting that
19 distribution figure that we're looking at on
20 this page.

21 A Well, Comcast had not moved the
22 NFL Network off D2.

1 Q Right.

2 A It had announced in September that
3 it planned to do so, but that's a different
4 question.

5 Q It hadn't done it.

6 A It had not done so.

7 Q So, you were still getting your D2
8 distribution.

9 A That is correct.

10 Q Okay. And then, for Time Warner,
11 we still have a zero.

12 A Correct.

13 Q Charter, we still have a zero.

14 A Correct.

15 Q Cablevision, we still have a zero.

16 A Correct.

17 Q And Mediacom, we have a zero. I
18 didn't see them on the earlier one, but
19 Mediacom is now on zero. Is that right?

20 A Yes.

21 Q Is Mediacom -- did Mediacom have
22 an objection to the price at this point?

1 A I don't know.

2 Q But it's correct, they weren't
3 carrying you either.

4 A That's correct.

5 Q These cable companies are listed
6 because these are among -- these are the
7 leading cable companies in the country.
8 Right?

9 A Yes. They're the top eight or ten
10 cable companies in the country.

11 Q And Comcast is the best of all of
12 them. It's given you almost [REDACTED]
13 distribution a year, and almost all the other
14 leaders are giving you nothing. Correct?

15 MR. LEVY: Objection;
16 argumentative.

17 JUDGE SIPPEL: Yes. I'll sustain
18 the objection.

19 BY MR. CARROLL:

20 Q Comcast is the leading distributor
21 amongst cable companies on this chart.
22 Correct?

1 A Comcast is the largest distributor
2 among cable companies on the chart.

3 Q One, two, three, four of the other
4 listed leading companies are giving you zero
5 distribution. Correct?

6 A Four are listed as zero
7 distribution. Correct.

8 Q Insight is listed as [REDACTED]

9 A Correct.

10 Q And Cox is listed at [REDACTED]

11 A Correct.

12 Q Okay. Did I hear you say early in
13 your testimony that the majority of the MVPDs,
14 I think that is in the glossary, that the
15 majority of the nation's MVPDs were carrying
16 the NFL Network?

17 A I don't believe I said that.

18 Q That would not be a true
19 statement, would it?

20 A No. There are 10,000 cable
21 companies throughout the country, I would
22 think.

1 Q About 10,000?

2 A Might be lower than that, but it's
3 north of a thousand.

4 Q Of that 10,000, how many, in fact,
5 are carrying NFL Network?

6 A Two hundred and fifty, or
7 thereabouts.

8 Q Two hundred and fifty out of the
9 roughly 10,000. And are you blaming Comcast
10 for the fact that 9,000 and some of the cable
11 companies aren't carrying NFL Network?

12 A There are certain of those cable
13 companies that negotiate jointly through a
14 cooperative. But, as of the last that I
15 heard, that NFL had not opened negotiations
16 with. We certainly can't blame Comcast for
17 any of that. As to some of the others, I
18 think that -- I would say that the timing of
19 Comcast's tiering announcement was
20 inauspicious for getting deals done.

21 Q Well, but, we saw that Comcast in
22 the prior document we looked at for '06,

1 Comcast hadn't said anything about tiering
2 yet, and you had zeroes from Time Warner, and
3 Charter, and Cablevision then. Correct?

4 A We had zeroes at that time. We
5 expected to do deals shortly before the
6 beginning of the season. Although, I will say
7 that it disrupted our negotiations, as opposed
8 to created havoc, certainly, the tiering
9 announcement chilled any negotiations that we
10 were having at that time.

11 Q And when Comcast signed up in '04,
12 it was a leader in signing up. It was one of
13 the first leading cable companies to sign up
14 to distribute you. Right?

15 A It was one of the first cable
16 companies to sign up and distribute, yes.

17 Q And you were actually hoping to
18 use Comcast to help sell the network to other
19 cable companies. You wanted them to help you.
20 Right?

21 A We believe that cable companies
22 tend to engage in pretty much follow the

1 leader behavior, and that if we got Comcast,
2 it would help us get others. That's correct.

3 Q But they didn't follow in '04 and
4 '05, even though Comcast was carrying.
5 Correct?

6 A They did not. That's correct.

7 Q Now, the next page in this Exhibit
8 307, is headed "Distributor Overview". And now
9 we get to that phrase I was asking you about.
10 Do you see in the right-hand column there are
11 a series of bullet points?

12 A Yes.

13 Q And, in the second bullet point,
14 you note some shifts. "You" being the NFL
15 here in this slide presentation.

16 A Yes.

17 Q Note some shifts in underlying
18 cable business changes -

19 A "Shifts in underlying cable
20 business, changes the dynamics."

21 Q Thank you for that.

22 A Yes.

1 Q And that cable penetration was
2 actually at its seventh year low, while
3 satellite was up 20 percent.

4 A Yes.

5 Q And, one of the reasons you
6 credited for why satellite was up, was that
7 they had your Sunday ticket deal, and cable
8 did not. Right?

9 A No, I think that Echo at this
10 time, EchoStar, which did not have Sunday
11 ticket was faster growing. But they did tend
12 to focus on video.

13 Q And for DirectTV, at least, who had
14 Sunday ticket, that was a huge selling point
15 that they used to drive distribution.
16 Correct?

17 A It was a major marketing tool for
18 them.

19 Q And it was a marketing tool they
20 used to take subscribers from cable, and bring
21 them over to DirectTV. Correct?

22 A And to sign up new households.

1 Yes, sir.

2 Q And then, at the third bullet
3 point we get to this phrase I'd asked about,
4 and the slide says, "As a result, NFL Network
5 programming very expensive to operators,
6 eroding video only margins." Have I read it
7 correctly?

8 A Yes.

9 MR. CARROLL: Okay. You can put
10 that exhibit to the side, sir.

11 THE WITNESS: Okay.

12 BY MR. CARROLL:

13 Q Now, we saw -- I want to go back,
14 if I can, to Comcast Exhibit 302. That was
15 the rather lengthy, maybe 50-page slide deck
16 for the annual meeting in '06. Do you still
17 have that?

18 A Yes, sir.

19 Q I want to ask about another page
20 in that. If you turn over to page 1535.

21 A 1535, yes.

22 Q 1535 in Exhibit 302, is headed,

1 "Key Distribution Risks and Opportunities." Is
2 that the page you have?

3 A Yes, sir.

4 Q And there are risks at the top and
5 opportunities at the bottom. And on the
6 risks, one of the risk there is Comcast tiers.
7 Do you see that?

8 A Yes.

9 Q And then you have dollar amounts
10 for each of the years going forward.

11 A Yes.

12 Q So, was this an analysis, a
13 financial analysis that the NFL did of what
14 the consequence to the NFL would be
15 financially if Comcast tiered?

16 A Yes.

17 Q And you had done this financial
18 analysis because, at this point, March of
19 2006, the eight games had been given to NFL
20 Network, and you're preparing for the
21 possibility that Comcast might tier.

22 A Preparing for the possibility that

1 Comcast might pass on the games and tier.

2 That's correct.

3 Q And this was a possibility that,
4 as we saw this morning, you had foreseen back
5 in 2004, when you talked about the VOD rights,
6 and the possibility that Comcast might tier,
7 unless there were an economic disincentive to
8 prevent that. Do you remember that from this
9 morning?

10 A I wouldn't say that I had foreseen
11 the possibility, but I do remember the email.
12 Yes.

13 Q Okay. And the dollar amounts
14 here, this is [REDACTED]

15 [REDACTED]

16 A Yes, sir.

17 Q Okay. This is what -- is that
18 revenues? Is that -- it's got dollars, so is
19 that revenues, is that EBITDA, is that cash?
20 What is that?

21 A I don't know.

22 Q Okay. But it's dollars. We can

1 agree on that.

2 A It's dollars.

3 Q So, it's [REDACTED]

4 [REDACTED] of either above the line,
5 or below the line money to NFL Network that
6 you projected.

7 A Right. It's a negative variance
8 to plan of something, yes.

9 Q And the other risks that you list
10 under that are that maybe you won't get Time
11 Warner, and what that will cost you if you
12 don't get them?

13 A Correct.

14 Q What will happen if you don't get
15 Cablevision.

16 A Correct.

17 Q And then the next one is, "Average
18 Sub Fee", and it looks like minus [REDACTED]
19 Is that where you're contemplating having to
20 drop the price by [REDACTED] and what that
21 would cost you?

22 A I don't know whether we were

1 contemplating it. I think that it's if we
2 ended up doing deals that resulted in a
3 decrease in sub fee.

4 Q All right. So you were
5 entertaining the possibility that maybe you'd
6 have to drop the price a little in order to
7 get fuller distribution of the NFL Network.
8 Right?

9 A Entertaining the possibility, we,
10 the NFL, me, whom. I would say that it was
11 identified as a possible outcome, yes.

12 Q Okay. It would be good business
13 planning, wouldn't it?

14 A Yes.

15 Q To project what would it cost us
16 to take [REDACTED] off of this -- the price of
17 this.

18 A Yes.

19 Q And this shows you what the
20 consequence would be if you took it down [REDACTED]

21 [REDACTED] Is that right?

22 A Yes. I believe so.

1 Q Okay. And then underneath that,
2 we have "Opportunities", and the last one
3 listed is what would be the opportunity if you
4 could raise the price by [REDACTED]
5 Right?

6 A It appears that's the case, yes.

7 Q Okay. Now, you calculate - I want
8 to go back to that Comcast tiers line. You
9 calculated here, and I think you said in your
10 answer that the dollar amounts in that line
11 were if Comcast tiers and it doesn't take the
12 games. Did I hear you correctly?

13 A Yes.

14 Q Are you sure, sitting here, that
15 these dollar amounts tied to a model that's
16 based on the games not being taken by Comcast?

17 A I'd have to look at the detail to
18 tell you whether those dollar amounts tie. I
19 can tell you that that's when Comcast could
20 have tiered.

21 Q That's a different question. I'm
22 not asking your view -

1 A I understand.

2 Q -- as a lawyer for when my client
3 can tier.

4 A I understand.

5 Q I'm asking you the dollar amounts
6 on this page. Are you in a position to
7 testify under oath that these amounts
8 represent dollar losses in a scenario where
9 Comcast has not taken the games and it tiers?

10 A Not without going back and
11 checking the detail. I'm not prepared to tell
12 you whether those are above the line, or below
13 the line either.

14 Q Now, did you ever do a calculation
15 on how much my client, Comcast, would save
16 financially, you calculated the sort of cost
17 to the NFL Network if they tiered. Did you
18 ever calculate what the dollar savings were to
19 my client if they tiered?

20 A Me or the NFL as both of those?

21 Q Actually, you, personally.

22 A I, personally, did the latter. As

1 to this, these aren't my calculations, which
2 is one of the reasons I can't speak to it.

3 Q When you say "the latter", you,
4 personally, did the calculation, back of the
5 envelope calculation for how much money
6 Comcast could save for itself and its
7 consumers if it tiered. Correct?

8 MR. LEVY: Objection; it's
9 compound.

10 THE WITNESS: I personally did a
11 calculation -

12 JUDGE SIPPEL: Wait a minute.

13 THE WITNESS: Yes, sir.

14 JUDGE SIPPEL: I'll sustain that
15 objection.

16 THE WITNESS: Yes.

17 JUDGE SIPPEL: Do you want to
18 rephrase it?

19 BY MR. CARROLL:

20 Q Did you do a calculation back of
21 the envelope on how much money Comcast would
22 save if it made a decision to tier this

1 network?

2 A I did a calculation of the
3 financial consequences to Comcast of tiering,
4 yes.

5 MR. CARROLL: Your Honor, for
6 identification, this is Comcast Exhibit 306,
7 one page, Bates numbers NFL-E-0934157, an
8 email from Mr. Hawkins to Mr. Bornstein, dated
9 June 18, 2007.

10 (WHEREUPON, THE DOCUMENT REFERRED
11 TO WAS MARKED AS COMCAST EXHIBIT
12 306 FOR IDENTIFICATION.)

13 MR. CARROLL: May I distribute?

14 JUDGE SIPPEL: June 18th. Yes,
15 please do. June 18?

16 MR. CARROLL: 2007.

17 JUDGE SIPPEL: Thank you.

18 BY MR. CARROLL:

19 Q First, let's just do an
20 authentication, Mr. Hawkins. This is an email
21 you wrote on June 18, 2007, while you were an
22 employee of the NFL, and sent to your boss,

1 Mr. Bornstein. Correct?

2 A Yes, sir.

3 MR. CARROLL: Move into evidence,
4 Your Honor.

5 JUDGE SIPPEL: It's marked and
6 received in evidence as Comcast Exhibit 306.

7 (WHEREUPON, THE DOCUMENT REFERRED
8 TO, PREVIOUSLY MARKED COMCAST
9 EXHIBIT NO. 306 FOR
10 IDENTIFICATION, WAS RECEIVED IN
11 EVIDENCE.)

12 BY MR. CARROLL:

13 Q Does this email set forth your
14 calculation that we just referred to as the
15 back of the envelope calculation?

16 A Yes, back of the envelope
17 financial consequences to Comcast of tiering.
18 Yes.

19 Q Okay. Now, the first thing --
20 let's set the context for this email. The
21 email in which you're setting forth this
22 calculation is one in which you're talking

1 about an issue with the Broncos, the Denver
2 Broncos team.

3 A Yes.

4 Q Is that right? And is the problem
5 that the Denver Broncos team had their own
6 separate deal with Comcast?

7 A That's the background of the
8 issue, yes.

9 Q And under -- what was that
10 separate deal direct between Comcast and the
11 Broncos for?

12 A I think a local sponsorship.

13 Q A local sponsorship, meaning that
14 they were a sponsor of the Broncos, and they
15 were receiving advertising of some sort?

16 A Comcast was the official cable
17 company video provider, or something, of the
18 Denver Broncos.

19 Q Okay. And that upset you, that
20 they had done the deal with Comcast, didn't
21 you?

22 A No.

1 Q Okay. Well, let's read along
2 together. You described your call with Joe
3 Ellis. Who is Joe Ellis? Was he somebody
4 with the Broncos?

5 A Yes, he's their Chief Operating
6 Officer.

7 Q Mr. Ellis is the Chief Operating
8 Officer of the Broncos?

9 A Yes.

10 Q Okay. And you describe the call
11 as [REDACTED]

[illegible]

1 A Given the state of play with
2 Comcast at the time, yes.

3 Q See, I didn't ask why, just [REDACTED]

4 [REDACTED]
5 [REDACTED] Right?

6 A Trying to -- I would say trying to
7 educate him to look at the big picture.

8 Q [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 Q And what you would him through, is
13 you say -- and, by the way, are the local
14 teams free to do their own deals with Comcast?

15 A Yes, they are.

16 Q Not all their own deals, though.
17 Right?

18 A They're free to do local
19 sponsorship, and advertising deals. That's
20 correct.

21 Q How about local video programming
22 deals? Are the local teams free to do that

1 with Comcast directly?

2 A That's a league function.

3 Q There was a moratorium imposed on
4 that, wasn't there, in 2004?

5 A No, there was a resolution passed
6 that said that all local video content deals
7 for VOD and certain other things were to be
8 sold collectively with the NFL Network.

9 Q Meaning that local team deals,
10 like the Cowboys, or the Atlantic Falcons,
11 couldn't do their own separate video deals
12 with Comcast. They would have to funnel those
13 deals through the NFL Network.

14 A The actual structure is a little
15 bit different than that. The actual structure
16 is that if the local cable carrier had a deal
17 with the NFL Network, then clubs could do
18 supplementary deals to deliver additional
19 content over and above that provided by the
20 NFL Network.

21 Q There were restrictions placed.
22 I'm trying to just do this to summarize it,

1 without getting into the details because of
2 the hour. There were restrictions that the
3 league imposed from the Commissioner's level
4 on teams, on their ability to do their
5 separate video deals with Comcast, and other
6 cable companies. Correct?

7 A No.

8 Q Okay.

9 A There was a resolution passed by
10 the membership, as opposed to a Commissioner
11 edict.

12 Q Do you remember Commissioner
13 Tagliabue, himself, imposed a moratorium by
14 edict before that resolution was adopted?

15 A He might have done so for a period
16 of a month or two.

17 Q Might have? Does that mean you
18 remember it?

19 A No, that does not.

20 Q Do you remember he did it in
21 September, right after the contract was signed
22 with my client, Comcast?